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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/774,765 | 01/30/2001 | Michael J. Docy | | 5565 |

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James A. Hudak, Esq.
Suite # 304
29425 Chagrin Boulevard
Cleveland, OH 44122-4602

EXAMINER

CYGAN, MICHAEL T

ART UNIT

PAPER NUMBER

2856

DATE MAILED: 03/07/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/774,765

Applicant(s)

DOCY ET AL.

Examiner

Michael Cygan

Art Unit

2856

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 February 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4-6 and 9-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4-6 and 9-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 July 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 20 February 2003 has been entered.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1 and 4-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Filippi (US 5,883,301). Filippi discloses a fuel tank tester utilizing an external source of pressure (pump 18), connections to pump relay [16] for connecting the external source of pressure to the tester, a pipeline [22] which connects the tester to the tank [20] and directs gas from the tank to a reference orifice [23], the reference orifice being connectable to the pipeline (column 12, lines

21-22), a pressure transducer [30], and a microcomputer [206] controlled electronics which perform timing functions and compare elapsed time and pressure values (Figure 1; column 12, lines 23-33; column 13, lines 25-28). See entire document, especially column 11, line 65 through column 13, line 41; and Figures 1, 2a, and 2b.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over

Kammeraad (US 5,507,176) in view of Dodge (US 4,575,807). Kammeraad discloses a method for testing a fuel tank comprising pressurization of a fuel tank with an external pressure source to a predetermined stable pressure, actuating a timer at the stable pressure, allowing the pressure to decay until a second, predetermined time is reached, and comparing the measured pressure difference to a predetermined leakage pressure difference to determine if the tank has an acceptable leakage rate; see column 7, lines 11-44. Kammeraad teaches the claimed invention except for the measurement of a pressure change over a predetermined time period, rather than the applicant's measurement of a time change over a predetermined pressure

period. Dodge teaches that for a fluid leak testing method, a leak determination can be made either as an allowable pressure drop within a set time or an allowable time period for a preset pressure drop; see column 1, lines 41-52. It would have been obvious to one having ordinary skill in the art at the time the invention was made to measurement of a pressure change over a predetermined time period as taught by Dodge in the invention of Kammeraad to determine if the tank has an acceptable leakage rate, since Dodge teaches that the two techniques can be used interchangeably.

3. Claims 9, 10, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Filippi (US 5,883,301) in view of Dodge (US 4,575,807). Filippi discloses a method for testing a fuel tank comprising pressurization of a fuel tank with an external pressure source to a predetermined stable pressure, actuating a timer at the stable pressure, allowing the pressure to decay until a second, predetermined time is reached, and comparing the measured pressure difference to a predetermined leakage pressure difference to determine if the tank has an acceptable leakage rate; see column 11, line 65 through column 13, line 41; and Figures 1, 2a, and 2b. The measurements include passage of gas through a reference orifice (column 12, lines 21-22), and are repeated (column 13, lines 37-38). Filippi teaches the claimed invention except for the comparison of an acceptable pressure change over a predetermined time period (column 13, lines 25-27),

an acceptable time change over a predetermined pressure period. Dodge teaches that for a fluid leak testing method, a leak determination can be made either as an allowable pressure drop within a set time or an allowable time period for a preset pressure drop; see column 1, lines 41-52. It would have been obvious to one having ordinary skill in the art at the time the invention was made to measurement of a pressure change over a predetermined time period as taught by Dodge in the invention of Filippi to determine if the tank has an acceptable leakage rate, since Dodge teaches that the two techniques can be used interchangeably.

Response to Arguments

4. Applicant's arguments have been considered but are not persuasive.

Applicant argues that the tests of the claimed invention differ from that provided by the Filippi reference since the claimed invention uses dynamic tests and a permanent reference orifice rather than the static tests and temporary reference orifice taught by Filippi. However, Filippi teaches repeated testing with the orifice between dispensing operations (column 12, line 63 through column 13, line 41); no step of removing the reference orifice is taught. Since the test of Filippi using the reference orifice is performed on the same system which is subsequently leak checked, gas would escape from any system leaks while escaping through the orifice. The elapsed times

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for pressure decay with and without the reference orifice are compared to determine the presence of a leak (especially column 13, lines 25-31).

5. With respect to the rejection of claim 9 under Kammeraad, in response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., reference orifice, not connected to the fuel cap, means to open and close the reference orifice) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Furthermore, in response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).
6. In response to applicant's argument that Dodge is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24

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USPQ2d 1443 (Fed. Cir. 1992). In this case, Dodge relates to a method and apparatus for determining a leakage rate in a vehicle system.

7. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Dodge teaches that for a fluid leak testing method, a leak determination can be made either as an allowable pressure drop within a set time or an allowable time period for a preset pressure drop.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Cygan whose telephone number is 703-305-0846. The examiner can normally be reached on 8:30-6 M-Th, alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron Williams can be reached on 703-305-4705. The fax phone numbers for the organization where this application or proceeding is assigned are 703-

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308-7722 for regular communications and 703-308-7722 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.

mtc

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March 4, 2003

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